

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Kerry A. Ivey	:	
-vs-	:	
Central Illinois Light Company d/b/a	:	
AmerenCILCO	:	09-0385
	:	
Complaint as to billing/charges in East	:	
Peoria, Illinois.	:	

PROPOSED ORDER

By the Commission:

I. PROCEDURAL HISTORY

On August 19, 2009, Kerry A. Ivey ("Complainant" or "Mr. Ivey") filed a verified Complaint with the Illinois Commerce Commission ("Commission") against Central Illinois Light Company d/b/a AmerenCILCO ("AmerenCILCO"), pursuant to Section 10-108 of the Public Utilities Act ("Act"). Mr. Ivey alleges he is a victim of identity theft when utility services were put in his name without his knowledge or authorization at 508 E. Gift Avenue, Peoria, Illinois. Mr. Ivey's prayer for relief is for AmerenCILCO to credit his account in the amount of \$955.15 of unauthorized charges.

Pursuant to notice as required by law and the rules and regulations of the Commission, a Prehearing Conference was held by a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Springfield, Illinois, on September 15, 2009. An evidentiary hearing was held on March 4, 2010. At the hearing, Mr. Ivey appeared pro se and presented no witnesses. AmerenCILCO appeared by counsel and presented its witness Carl Fisher. At the conclusion of the hearing, the record was marked "Heard and Taken."

II. LEGAL STANDARD

Pursuant to Section 10-15 of the Illinois Administrative Procedure Act, 5 ILCS 100/1-1 et seq., provides that "[u]nless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence."

III. TESTIMONY OF PARTIES

A. Terry Ivey's Position

Mr. Ivey testified that on or about April 6, 2008, his daughter Kelly Ivey called and asked him if she could put electric [utility services] in his name. Mr. Ivey agreed to the arrangement but only for three months. According to Mr. Ivey, Kelly was not happy with the limitation and told him she had other options such as the Energy Assistance Program ("EAP"). Soon thereafter on Memorial Day weekend, Mr. Ivey testified that Kelly informed him that the EAP paid \$600.00 towards her [utility] bills.

It was not until September of 2008 that Mr. Ivey learned that his daughter moved out of her residence at 508 E. Gift Avenue, Peoria, Illinois and moved to Texas. He learned this after he received her [forwarded] mail. Her utility bill indicated that she had an outstanding balance of \$955.15. Mr. Ivey inquired with AmerenCILCO regarding this bill and they informed him that electric and gas services were put in his name using his social security number on April, 8, 2008.

Mr. Ivey testified that he resides at 1186 Upper Spring Bay Road, East Peoria, Illinois and has no connection with the address at 508 E. Gift Ave, Peoria, Illinois where the utility usage occurred; therefore he should not be held responsible for the charges incurred. Mr. Ivey further testified that he believes these charges were incurred sometime in August or September through November of 2008.

At the evidentiary hearing, Mr. Ivey argued that he did not put the services in his name and that it was his understanding that AmerenCILCO's policy required people to appear in person in order to put services in their name. He argued if AmerenCILCO changed its policy he should not be held responsible for not knowing it was no longer the policy. He further argued that it is commonly known that sons and daughters have access to their parents' social security numbers and use them all the time, such as for school purposes. Therefore, because he did not actually call AmerenCILCO himself or appear in person to put the services in his name, then he should not be held responsible.

B. AmerenCILCO's Position

AmerenCILCO's witness Carl Fisher testified that he has been employed by AmerenCILCO as a Customer Service Representative in the Credit and Collections Department for 3½-years. As supervisor, one of his duties is to assist customers who may have been victims of identity theft. This includes sending the required documentation such as an ID Theft Affidavit to affected customers; reviewing submitted documentation; assisting customers with completing the affidavit (if incomplete); and then investigating the allegations.

Mr. Fisher sponsors the following exhibits in support of his testimony: AmerenCILCO Exhibit 1.1: Account Activity Statement for Mr. Ivey's AmerenCILCO

Account No. 49217-18060; AmerenCILCO Exhibit 1.2: AmerenCILCO ID Theft Affidavit from Kerry Ivey (Received on May 22, 2009); AmerenCILCO Exhibit 1.3: AmerenCILCO correspondence to Kerry Ivey (May 26, 2009); AmerenCILCO Exhibit 1.4: AmerenCILCO ID Theft Affidavit from Kerry Ivey (Received on June 9, 2009).

On December 8, 2008, Mr. Fisher testified that a delinquent balance of \$955.15 was transferred from Mr. Ivey's account at 508 E. Gift Ave, Peoria, Illinois to Mr. Ivey's other account at 1186 Upper Spring Bay Road, East Peoria, Illinois. Both accounts had Mr. Ivey's name and social security number associated with the accounts.

On April 24, 2009, AmerenCILCO received mail correspondence from Mr. Ivey stating that the \$955.15 balance transferred to his account was not his responsibility and that someone else was inappropriately using his name. At this time, AmerenCILCO sent Mr. Ivey correspondence requesting that Mr. Ivey call AmerenCILCO to discuss the situation.

On May 4, 2009, Mr. Ivey called AmerenCILCO's office and spoke to Customer Service Representative (CSR), Joyce Boyd, who told Mr. Ivey that a fraud packet would be mailed out to him regarding the alleged fraudulent use of his name in obtaining the service at 508 E Gift Ave, Peoria, Illinois. Mr. Ivey also received a disconnect notice for his residence at 1186 Upper Spring Bay Road, East Peoria, Illinois for the delinquent amount of \$1,538.24. Mr. Fisher testified that Mr. Ivey asked the CSR about the disconnect notice; she told him "she would take care of it." The CSR temporarily suspended the disputed \$955.15 portion of the delinquent balance pending a resolution of the allegations contained in Mr. Ivey's fraud packet; however, an unpaid balance of \$560.34 for the 1186 Upper Spring Bay Road, East Peoria, Illinois premises remained due and owing. The CSR called Mr. Ivey back to explain the distinction between the two delinquent balances, but was unable to reach him.

Mr. Ivey's electric service at 1186 Upper Spring Bay Road, East Peoria, Illinois was disconnected on May 7, 2009 but then reconnected on May 8, 2009 because the distinction between the two delinquent balances had never been explained to Mr. Ivey. On the same date, AmerenCILCO issued correspondence to Mr. Ivey requiring that he pay a deposit of \$454.00 for the reconnection of his electric service.

Mr. Fisher testified that upon receipt of Mr. Ivey's Informal Complaint on May 20, 2009, AmerenCILCO conducted a review of Mr. Ivey's account. AmerenCILCO concluded that the deposit in the amount of \$454.00 assessed due to the disconnection for non-payment should be removed from Mr. Ivey's account because of the confusion regarding the two balances.

AmerenCILCO received Mr. Ivey's fraud packet on May 22, 2009. AmerenCILCO immediately contacted Mr. Ivey and informed him by mail that his fraud packet was incomplete because Mr. Ivey did not provide a copy of the police report or documentation to establish his place of residency. Additionally, there were items that needed to be completed on the affidavit. Mr. Ivey was also advised that the police

report needed to be forwarded to a law enforcement agency within the correct jurisdiction, namely the Peoria Police Department.

On June 1, 2009, Mr. Fisher testified that Mr. Ivey called AmerenCILCO's Credit Department in response to AmerenCILCO's letter informing him that his fraud packet was incomplete. During the conversation with AmerenCILCO's CSR, Mr. Ivey stated that his daughter began living at 508 E. Gift Ave., Peoria, Illinois in 2006 and that her electric service had been disconnected for non-payment. Mr. Fisher testified that Mr. Ivey told him that he willingly allowed the service at 508 E. Gift Ave., Peoria, Illinois to be placed in his name for his daughter. Mr. Ivey stated further that he thought such service was taken out of his name in June 2008. AmerenCILCO received Mr. Ivey's updated fraud packet on June 9, 2009.

Mr. Fisher testified that based upon AmerenCILCO's review of Mr. Ivey's fraud packet, it does not believe an identity theft has occurred and AmerenCILCO has therefore not removed the disputed \$955.15 in charges from Mr. Ivey's account. As he agreed to have the service placed in his name, Mr. Ivey is responsible for the account balance.

Mr. Fisher explained that electric service was never disconnected at 508 E. Gift Ave., Peoria, Illinois while this property was in Mr. Ivey's name; however, the electric service was disconnected for nonpayment while the electric account was in the name of the two previous accountholders. Electric service was in Kelly Ivey's name from June 24, 2006 through October 31, 2007, and was disconnected for non-payment. Electric service was then immediately placed into another individual's name, Greg Macias, Jr. Electric service was again disconnected for non-payment for Mr. Macias on April 3, 2008.

On April 22, 2008, the City of Peoria Code Enforcement contacted AmerenCILCO to inquire if there was any active service at 508 E Gift Avenue, Peoria, Illinois. Mr. Fisher explained that the City of Peoria requires all residents to have active electric service; otherwise they will be evicted from their residence. On April 24, 2008, electric service was placed into Kerry Ivey's name.

Mr. Fisher testified that AmerenCILCO received a phone call on April 24, 2008 from a person alleging to be Kerry Ivey. During this call, Mr. Ivey's contact information and social security number were given to AmerenCILCO's CSR, Scott Sutherland, in support of the request to changeover the service account.

Mr. Fisher opined that upon review of Mr. Ivey's ID Theft Affidavit received by AmerenCILCO on May 22, and June 9, 2009, indicates that Mr. Ivey gave his daughter, Kelly Ivey, permission to place the electric service at 508 E. Gift Ave., Peoria, Illinois in his name. His affidavit names Amber Throgmorton, a person who later obtained electric service at 508 E. Gift Ave., Peoria, Illinois, as the person he suspects of stealing his identity. Mr. Ivey indicated that Ms. Throgmorton committed identity theft in both of his ID Theft Affidavits. Mr. Ivey did not mention Kelly Ivey in either ID Theft Affidavit. In its

investigation, AmerenCILCO could not find any evidence of identity theft on the part of Ms. Throgmorton. Furthermore, the Woodford County Sheriff's Department report supplied by Mr. Ivey indicates that their investigator believes that "Kelly may have left the power on at the residence and when Ms. Throgmorton moved in she never contacted CILCO."

Mr. Fisher testified that to date, AmerenCILCO has not received any indication that Mr. Ivey has ensured that his report was received by the Peoria Police Department. A victim of identity theft can legally file his/her report with a law enforcement agency that has jurisdiction where the victim resides or in jurisdiction where the incident occurred. However, the report must be investigated by an agency with jurisdiction where the incident occurred (i.e., where utility service was obtained). Mr. Ivey was not incorrect in filing his report with the Woodford County Sheriff's Department; however that agency has no jurisdiction to investigate or to file criminal charges.

Mr. Fisher testified that between April 24, 2008, when the electric service was placed in Mr. Ivey's name, and November 7, 2008, when the electric service was placed in Amber Throgmorton's name, AmerenCILCO was contacted by a person who its suspected to potentially be female contacted AmerenCILCO on August 8, 2008, August 19, 2008, and September 30, 2008, with regard to potentially establishing a payment arrangement for the past due balance. In each instance, the person identified their self as "Kerry Ivey." At no time was a request for a disconnection or changeover in service ever made.

Mr. Fisher explained that Mr. Ivey began electric service at 508 E. Gift Ave., Peoria, Illinois on April 24, 2008. On December 8, 2008, a delinquent balance of \$955.15 was transferred from Mr. Ivey's account at 508 E. Gift Ave, Peoria, Illinois to Mr. Ivey's other account at 1186 Upper Spring Bay Road, East Peoria, Illinois. The balance of \$955.15 represents an accurate computation of fees due and owing to AmerenCILCO for electric consumption at 508 E. Gift Ave, Peoria, Illinois between April 24, 2008 and November 7, 2008. Mr. Ivey was billed an electric deposit of \$454.00, but this charge was later removed. Mr. Ivey's electric account¹ balance now totals \$1,114.18, with \$966.59 suspended for delinquent amounts carried over from 508 E. Gift Ave., Peoria, Illinois.

IV. DISCUSSION

This case involves utility charges incurred at 508 E. Gift Avenue, Peoria, Illinois in the name of Terry Ivey from April 24, 2008 to November 7, 2008. Complainant Terry Ivey must show that he did not authorize anyone to put utility services in his name at 508 E. Gift Avenue and therefore the utility services were fraudulently obtained. The outstanding balance contested is \$955.15.

¹ Account No. 96301-15132.

According to the record, Mr. Ivey's daughter, Kelly Ivey resided at 508 E. Gift Avenue in April of 2008. It was at that time, that Kelly Ivey called Mr. Ivey and asked him if she could put utility services in his name. During that conversation, Mr. Ivey agreed to the arrangement for three months. Mr. Ivey's authorization to Kelly Ivey is corroborated by AmerenCILCO's witness Carl Fisher who testified that Mr. Ivey told him that he willingly allowed the services at 508 E. Gift Ave., Peoria, Illinois to be placed in his name for his daughter. Utility services were then established on April 24, 2008 under the name Terry Ivey.

It is unclear, on what date Kelly Ivey vacated the residence. However, when Kelly Ivey moved out she left an outstanding balance of \$955.15.

Mr. Ivey speculated that a subsequent tenant after Kelly Ivey moved out may be responsible for the charges incurred. He stated that his daughter moved out in September and that he believes the charges were incurred sometime between the months of August through November of 2008.

The Commission does not decide cases based on mere speculation in favor of the party that bears the burden of proof. Mr. Ivey's own testimony does not support this contention. He testified that "[s]he [Kelly Ivey] moved out sometime in Sept of 2008. She [Kelly Ivey] left a bill of \$955.15 unpaid."

AmerenCILCO also introduced into evidence a letter to Ameren from Mr. Ivey stating that, "I never called ...A[meren] to have her [Kelly Ivey] account put on my name. If it was put in my name, it was put there by Kelly Ivey and not by me. Since she put this in my name, she should be the one responsible to pay the bill."

If Mr. Ivey seeks to rely on his claim that he is a victim of identity theft, he is required to produce by a preponderance of the evidence that he did not give anyone authorization to put the utility charges in his name. However, none of the evidence discussed above would support such a finding. It is the opinion of the Commission that Mr. Ivey is not a victim of identity theft in this case, because he authorized his daughter to place services in his name. Further, it is puzzling to the Commission that Mr. Ivey is of the opinion that AmerenCILCO should be held responsible for the agreement that Mr. Ivey made with his daughter.

Mr. Ivey argued that he did not call or appear in person at AmerenCILCO's offices to request services in his name and therefore, he should not be held responsible for the charges incurred. It is the Commission's opinion that it is of no consequence whether Mr. Ivey or his daughter appeared in person or contacted AmerenCILCO by phone. The issue is whether he gave authorization for services to be put in his name.

The Commission finds that on April of 2008, Mr. Ivey gave expressed approval to his daughter, Kelly Ivey to place utility service in his name. That on April 24, 2008, Kelly Ivey placed the utilities in Mr. Ivey's name. The Commission further finds that the amount in dispute was incurred beginning on April 24, 2008 until November 7, 2008, when the utilities were transferred to the subsequent tenants in the amount of \$955.15.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Respondent AmerenCILCO is a corporation duly organized and existing under the laws of Illinois and is engaged in supplying electricity utility services to the public in Illinois and is a public utility within the meaning of Section 3-105 of the Illinois Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (3) the findings of fact and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) that the amount in dispute of \$955.15 was incurred beginning on April 24, 2008 through November 7, 2008;
- (5) that Complainant Kerry A. Ivey gave his daughter Kelly Ivey expressed authorization on April, 2008 to obtain utility services in his name at 508 E. Gift Avenue, Peoria, Illinois;
- (6) that Respondent AmerenCILCO is due the balance of \$955.15 for charges incurred pursuant to Complainant Kerry A. Ivey's authorization to his daughter Kelly Ivey to obtain services in his name;
- (7) that Complainant Kerry A. Ivey's Complaint filed on August 19, 2009, against Respondent AmerenCILCO therefore must be denied;
- (8) all motions and pleadings not addressed in this Order are hereby dismissed and disposed of consistent with this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by Complainant Kerry A. Ivey against Respondent AmerenCILCO be, and is hereby, denied.

IT IS FURTHER ORDERED that Respondent AmerenCILCO is due the balance of \$955.15 for charges incurred pursuant to Complainant Kerry A. Ivey's authorization to his daughter to obtain services in his name;

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final, it is not subject to the Administrative Review Law.

Dated: March 18, 2010

Briefs on Exceptions due: April 1, 2010

Reply Briefs due: April 8, 2010

Lisa M. Tapia
Administrative Law Judge